IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1 OF 2005

IN

WRIT PETITION NO.2163 OF 2004

M/s. Union Traders .. ..Petitioner

Versus

1.Bombay Electric Supply &

Transport Undertaking & Anr. .. ..Respondents

Mr.Y.S.Dharwadkar for petitioner

Mr.H.Toor i/b Crawford Bayley & Co. for respondents

CORAM : P.V.KAKADE, J.

DATE : 30TH NOVEMBER,2005

P.C.:

1. Heard the learned counsel for both the parties.

2. This notice of motion is taken out by the petitioner against the order passed by this Court dated

5.8.2004 dismissing the Writ Petition for default and seeking restoration of the same.

. According to the Petitioner, that they had no knowledge of dismissal of the petition and that they were watching the board till the day of 12th October, 2004 and ultimately the advocate for the petitioner wrote a letter to the Prothonotary & Senior Master to produce the papers and proceedings to the court but even then the petition did not appear on board and therefore, enquiry was made and they came to know the dismissal of the petition.

. The impugned order shows that the matter was in fact on Board on 4.8.2004 and none was present for the petitioner on account of problems of the transport and therefore, the matter was adjourned on 5.8.2005, however, none was present for the petitioner on the adjourned date and therefore, the matter came to be dismissed. In this regard, it must be noted that it is evident that there was transport problem on 4.8.2004 due to which the matter was adjourned on the very next day and it was duty of the concerned advocate to see the board and locate his matter. However, it is submitted

that he escape his attention, as a result of which the matter came to be dismissed. In my considered view, it was indeed a lapse on the part of the advocate, however, I am inclined to hold that the party should not be put to sufferance due to the lapse on the part of the advocate and this aspect in my view is sufficient cause to set aside the order.

3. Hence, the notice of motion is made absolute in terms of prayer clause (a) on condition that the petitioner shall pay cost of Rs.3000/=, out of which half of the amount shall be donated to the State Legal Authority and rest of the amount shall be paid to the Respondents within two weeks. The writ petition to be placed for admission after three weeks.